

NAGACO.076APC



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : John Francis Gordon
Appl. No. : 09/284,421
Filed : June 11, 1999
For : APPARATUS AND METHOD
FOR CONDUCTING ASSAYS
Examiner : Patricia K. Bex
Group Art Unit : 1743

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STATEMENT UNDER 37 C.F.R. § 3.73(b)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Nagaoka & Co., LTD., a Japanese Corporation, states that it is an assignee of one half of the entire right, title and interest in the above-referenced patent application by virtue of a chain of title from the inventor(s) of the patent application identified above, to the current assignee as shown below:

1. All right, title, and interest was assigned from the inventor, John Francis Gordon, to Molecular Drives Limited. The document was recorded in the United States Patent and Trademark Office at Reel 010036, Frame 0805.
2. All right, title, and interest was assigned from Molecular Drives Limited to The University Court of the University of Glasgow. The document was recorded in the United States Patent and Trademark Office at Reel 010400, Frame 0621.
3. All right, title, and interest was assigned from The University Court of the University of Glasgow to Burstein Laboratories, Inc. The document was recorded in the United States Patent and Trademark Office at Reel 013832, Frame 0554.
4. Burstein Laboratories, Inc. changed its name to Burstein Technologies, Inc. as demonstrated in the attached exhibit. Although not yet recorded, a separate copy

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of the Name Change is being submitted to the Assignment Division in accordance with 37 C.F.R. Part 3 to be recorded in the records of the U.S. Patent and Trademark Office.

5. An undivided one half of the entire right, title, and interest was assigned from Burstein Technologies, Inc. to Nagaoka & Co., LTD. The document was recorded in the United States Patent and Trademark Office at Reel 014192, Frame 0310.

The undersigned, whose title is supplied below, is authorized to act on behalf of the assignee. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: Aug. 20, 2004

By: Drew S. Hamilton
Drew S. Hamilton
Registration No. 29,801
Attorney of Record
Customer No. 20,995
(619) 235-8550

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I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "BURSTEIN LABORATORIES, INC.", CHANGING ITS NAME FROM "BURSTEIN LABORATORIES, INC." TO "BURSTEIN TECHNOLOGIES, INC.", FILED IN THIS OFFICE ON THE TWENTY-SIXTH DAY OF JANUARY, A.D. 2000, AT 6 O'CLOCK P.M.



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

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AUTHENTICATION: 2915028

DATE: 02-05-04

**CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION**

Burstein Laboratories, Inc.

Burstein Laboratories, Inc., a corporation, organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of said corporation, at a meeting duly held, adopted a resolution proposing and declaring advisable the following amendment to the Certificate of Incorporation of said corporation:

RESOLVED, that the Amended Certificate of Incorporation of Burstein Laboratories, Inc. be amended by changing the First Article thereof so that, as amended, said Article shall be and read as follows:

The name of this corporation shall be Burstein Technologies, Inc.

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given written consent to said amendment in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware and written notice of the adoption of the amendment has been given as provided in Section 228 of the General Corporation Law of the State of Delaware to every stockholder entitled to such notice.

IN WITNESS WHEREOF, said Burstein Laboratories, Inc. has caused this certificate to be signed by Ed Deese its Secretary, this 20th day of January, 2000.

By: 

Ed Deese, Secretary



DECLARATION IN SUPPORT OF REVIVAL OF
U.S. PATENT APPLICATION NO. 09/284,421

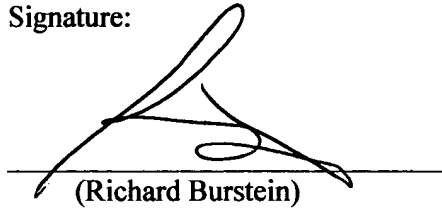
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I, Richard Burstein, hereby declare that, to the best of my knowledge, information, and belief, the following is true, accurate, and correct:

- 1) I am the Chief Executive Office ("CEO") of Burstein Technologies, Inc. ("BTI") and have been the CEO of BTI during all dates described below.
- 2) BTI is the original assignee of U.S. Patent Application No. 09/284,421 ("the '421 application").
- 3) BTI employed a full time patent attorney, Donald Bollella, from about November 2000 until September 5, 2003. Mr. Bollella was familiar with all matters of BTI's Intellectual Property during this time, and it was his task to prosecute and maintain BTI's patent matters.
- 4) During all dates described below, a paralegal was employed by BTI and was tasked to work with Mr. Bollella in maintaining BTI's patent matters.
- 5) Mr. Bollella and his paralegal maintained electronic status reports for all patent matters, including recordation of actions due and deadlines for each matter.
- 6) In the December 2002 to January 2003 time period, BTI began laying off employees due to the lack of capital.
- 7) After about February 2003, BTI spent no further money on patent matters.
- 8) On or about April 4, 2003, all BTI employees (excluding officers) were sent away on an unpaid furlough.
- 9) Due to the departure of BTI employees, records relating to maintenance of the '421 application were not consistently updated during the balance of 2003.
- 10) An Office Action (the "Office Action"), for the '421 application was mailed from the Patent and Trademark Office ("PTO") to BTI on May 20, 2003, setting an initial deadline for response of August 20, 2003.
- 11) On or about October 31, 2003, all officers of BTI, excluding Richard Burstein, were terminated.
- 12) On November 4, 2003, BTI agreed to sell an undivided partial ownership interest in all intellectual property matters in order to raise money to allow BTI to continue doing business. Accordingly, a partial ownership interest in more than 200 U.S. and foreign patent matters, including the '421 application, was granted to Nagaoka & Co., LTD ("Nagaoka") in exchange for monetary consideration. Nagaoka, as a partial owner of the '421 application, has an interest in maintaining the '421 application.
- 13) On or about November to December 2003, the Lessor of the BTI office space took over the office space, forcing me to work from my home in continuing to seek investment funds. Because there was no longer an office available to store BTI documents and equipment, BTI records, including patent related records, were moved to a storage unit.
- 14) On December 9, 2003, the PTO mailed a Notice of Abandonment of the '421 application to the BTI office space. This Notice of Abandonment was not marked as being received by BTI until January 16, 2004.
- 15) To my knowledge, on or about December 2003, Nagaoka instructed the U.S. law firm of Knobbe, Martens, Olson & Bear, LLP ("KMOB"), to prosecute certain patent matters partially assigned to Nagaoka. Accordingly, about 211 patent matters were to be transferred to KMOB.

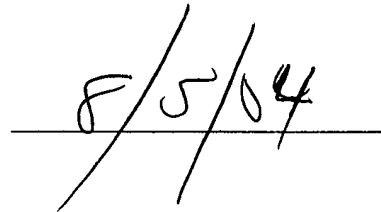
16) At the request of KMOB, Mr. Bollella began preparing updated status reports with regard to all patent matters that were partially transferred to Nagaoka, relying on mail forwarded to his attention from BTI and BTI's outside counsel. On 19 January 2004, Mr. Bollella provided these updated status reports to KMOB.

Signature:



(Richard Burstein)

Date:





DECLARATION IN SUPPORT OF REVIVAL OF
U.S. PATENT APPLICATION NO. 09/284,421

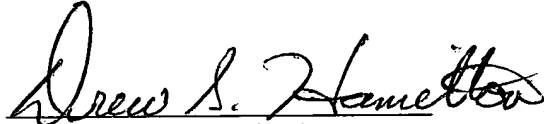
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I, Drew S. Hamilton, hereby declare that, to the best of my knowledge, information, and belief, the following is true, accurate, and correct:

- 1) I am a partner at Knobbe, Martens, Olson & Bear, LLP ("KMOB") and help coordinate prosecution of patents matters assigned to our client, Nagaoka and Co., LTD ("Nagaoka").
- 2) On November 4, 2003, Burstein Technologies, Inc. ("BTI") sold an undivided partial ownership interest in all intellectual property matters to Nagaoka. Accordingly, a partial ownership interest in more than 200 U.S. and foreign patent matters, including U.S. Patent Application No. 09/284,421 ("the '421 application"), was granted to Nagaoka.
- 3) On or about December 2003, Nagaoka engaged KMOB to ascertain the status, to initiate file transfers, and to prosecute certain patent matters that were partially assigned to them from BTI on November 4, 2003.
- 4) From about December 2003 to March 2004, KMOB employed the services of a copy firm to copy the patent matters that Nagaoka had asked KMOB to prosecute. During this time, the files for these patent matters were locked in a storage unit that was about 90 miles from KMOB's San Diego office. Mr. Bollella was the only individual with a key to the storage unit and, thus, KMOB was required to coordinate access to the files with Mr. Bollella. An attorney from our firm made at least three trips from San Diego to the storage unit during this time period in order to sort through the files held therein and determine which files should be copied and transferred into KMOB.
- 5) KMOB has a formal file transfer procedure that is normally performed by a full time employee assigned to complete these formal procedures. However, due to the large number of patent matters that were being transferred to KMOB, additional docketing personnel were also assigned to assist in the formal file transfer procedures. Over the several month period when files were being transferred, KMOB received at least three different file deliveries, each containing a large number of files to be docketed. In addition to the many files that were transferred, the file deliveries included numerous stacks of loose documents. Each of those documents had to be reviewed, docketed if necessary, and placed in the appropriate file accordingly. Thus, even with the assistance of additional docketing personnel, complete transfer of the more than 200 patent files into KMOB required several weeks.
- 6) A work file for the '421 application was opened by KMOB on May 1, 2004.
- 7) In May 2004, KMOB discovered that A Notice of Abandonment directed to the '421 application (the "Office Action") had been mailed from the Patent and Trademark Office ("PTO") to BTI on December 9, 2003. KMOB determined that the '421 application had become abandoned on August 20, 2003.
- 8) After determining that the '421 application was abandoned, on May 21, 2004 KMOB promptly contacted Nagaoka and subsequently received instructions to file a petition for revival and to prepare a Response to the outstanding Office Action.
- 9) KMOB then obtained the necessary prior art and priority documents, and prepared a Response to the outstanding Office Action which is filed concurrently herewith.

- 10) As detailed in the statements above and also in the related declaration of Richard Burstein, the entire delay in filing the required Response to the Office Action from the due date for the reply until the filing of the petition for revival of the '421 application, which is filed herewith, was unintentional or, alternatively, unavoidable.

Signature:


(Drew S. Hamilton)

Date:

Aug 20, 2004